

Effective 5/9/2017

Chapter 6 Uniform Voidable Transactions Act

Part 1 General Provisions

25-6-101 Title.

- (1) This chapter is known as the "Uniform Voidable Transactions Act."
- (2) This part is known as "General Provisions."

Renumbered and Amended by Chapter 204, 2017 General Session

25-6-102 Definitions.

As used in this chapter:

- (1) "Affiliate" means:
 - (a) a person that directly or indirectly owns, controls, or holds with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person that holds the securities:
 - (i) as a fiduciary or agent without sole discretionary power to vote the securities; or
 - (ii) solely to secure a debt, if the person has not exercised the power to vote;
 - (b) a corporation 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person that directly or indirectly owns, controls, or holds, with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person that holds the securities:
 - (i) as a fiduciary or agent without sole discretionary power to vote the securities; or
 - (ii) solely to secure a debt, if the person has not exercised the power to vote;
 - (c) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or
 - (d) a person that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.
- (2) "Asset" means property of a debtor, but does not include:
 - (a) property to the extent it is encumbered by a valid lien;
 - (b) property to the extent it is generally exempt under nonbankruptcy law; or
 - (c) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.
- (3) "Claim," except as used in "claim for relief," means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.
- (4) "Creditor" means a person that has a claim.
- (5) "Debt" means liability on a claim.
- (6) "Debtor" means a person that is liable on a claim.
- (7) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (8) "Insider" includes:
 - (a) if the debtor is an individual:
 - (i) a relative of the debtor or of a general partner of the debtor;
 - (ii) a partnership in which the debtor is a general partner;

- (iii) a general partner in a partnership described in Subsection (8)(a)(ii);
- (iv) a corporation of which the debtor is a director, officer, or person in control; or
- (v) a limited liability company of which the debtor is a member or manager;
- (b) if the debtor is a corporation:
 - (i) a director of the debtor;
 - (ii) an officer of the debtor;
 - (iii) a person in control of the debtor;
 - (iv) a partnership in which the debtor is a general partner;
 - (v) a general partner in a partnership described in Subsection (8)(b)(iv);
 - (vi) a limited liability company of which the debtor is a member or manager; or
 - (vii) a relative of a general partner, director, officer, or person in control of the debtor;
- (c) if the debtor is a partnership:
 - (i) a general partner in the debtor;
 - (ii) a relative of a general partner in, a general partner of, or a person in control of the debtor;
 - (iii) another partnership in which the debtor is a general partner;
 - (iv) a general partner in a partnership described in Subsection (8)(c)(iii);
 - (v) a limited liability company of which the debtor is a member or manager; or
 - (vi) a person in control of the debtor;
- (d) if the debtor is a limited liability company:
 - (i) a member or manager of the debtor;
 - (ii) another limited liability company in which the debtor is a member or manager;
 - (iii) a partnership in which the debtor is a general partner;
 - (iv) a general partner in a partnership described in Subsection (8)(d)(iii);
 - (v) a person in control of the debtor; or
 - (vi) a relative of a general partner, member, manager, or person in control of the debtor;
- (e) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and
- (f) a managing agent of the debtor.
- (9) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.
- (10) "Organization" means a person other than an individual.
- (11) "Person" means an individual, estate, partnership, limited liability company, association, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal or commercial entity.
- (12) "Property" means anything that may be the subject of ownership.
- (13) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium that is retrievable in perceivable form.
- (14) "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.
- (15) "Sign" means, with present intent to authenticate or adopt a record:
 - (a) to execute or adopt a tangible symbol; or
 - (b) to attach to or logically associate with the record an electronic symbol, sound, or process.
- (16) "Transfer" means every mode, direct or indirect, absolute or conditional, or voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

- (17) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Renumbered and Amended by Chapter 204, 2017 General Session

25-6-103 Insolvency.

- (1) A debtor is insolvent if, at fair valuation, the sum of the debtor's debts is greater than all of the debtor's assets.
- (2)
- (a) A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent.
- (b) The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.
- (3) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.
- (4) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

Renumbered and Amended by Chapter 204, 2017 General Session

25-6-104 Value -- Transfer.

- (1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied. However, value does not include an unperformed promise made other than in the ordinary course of the promisor's business to furnish support to the debtor or another person.
- (2) Under Subsection 25-6-202(1)(b) and Section 25-6-203, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.
- (3) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is substantially contemporaneous.

Renumbered and Amended by Chapter 204, 2017 General Session

Part 2

Voidable Transfer or Obligation

25-6-201 Title.

This part is known as "Voidable Transfer or Obligation."

Enacted by Chapter 204, 2017 General Session

25-6-202 Voidable transfer or obligation -- Present or future creditor -- Determination of intent -- Burden of proof.

- (1) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
 - (a) with actual intent to hinder, delay, or defraud any creditor of the debtor; or
 - (b) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - (i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - (ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.
- (2) To determine "actual intent" under Subsection (1)(a), consideration may be given, among other factors, to whether:
 - (a) the transfer or obligation was to an insider;
 - (b) the debtor retained possession or control of the property transferred after the transfer;
 - (c) the transfer or obligation was disclosed or concealed;
 - (d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
 - (e) the transfer was of substantially all the debtor's assets;
 - (f) the debtor absconded;
 - (g) the debtor removed or concealed assets;
 - (h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
 - (i) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
 - (j) the transfer occurred shortly before or shortly after a substantial debt was incurred; and
 - (k) the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.
- (3) A creditor making a claim for relief under Subsection (1) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Renumbered and Amended by Chapter 204, 2017 General Session

25-6-203 Transfer or obligation voidable -- Present creditor -- Burden of proof.

- (1) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if:
 - (a) the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and
 - (b) the debtor was insolvent at the time or became insolvent as a result of the transfer or obligation.
- (2) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time, and the insider had reasonable cause to believe that the debtor was insolvent.
- (3) Subject to Subsection 25-6-103(2), a creditor making a claim for relief under Subsection (1) or (2) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Renumbered and Amended by Chapter 204, 2017 General Session

Part 3

Transfers and Remedies

25-6-301 Title.

This part is known as "Transfers and Remedies."

Enacted by Chapter 204, 2017 General Session

25-6-302 Transfer -- When made.

In this chapter:

- (1) a transfer is made:
 - (a) with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and
 - (b) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien other than under this chapter that is superior to the interest of the transferee;
- (2) if applicable law permits the transfer to be perfected as provided in Subsection (1) and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action;
- (3) if applicable law does not permit the transfer to be perfected as provided in Subsection (1), the transfer is made when it becomes effective between the debtor and the transferee;
- (4) a transfer is not made until the debtor has acquired rights in the asset transferred; and
- (5) an obligation is incurred:
 - (a) if oral, when it becomes effective between the parties; or
 - (b) if evidenced by a record, when the record signed by the obligor is delivered to or for the benefit of the obligee.

Renumbered and Amended by Chapter 204, 2017 General Session

25-6-303 Remedies of creditors.

- (1) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in Section 25-6-304, may obtain:
 - (a) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;
 - (b) an attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law;
 - (c) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:
 - (i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
 - (ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or
 - (iii) any other relief the circumstances may require.

- (2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court orders, may levy execution on the asset transferred or its proceeds.

Renumbered and Amended by Chapter 204, 2017 General Session

25-6-304 Good faith transfer.

- (1) Except as otherwise provided in this section, a transfer or obligation is not voidable under Subsection 25-6-202(1)(a) against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.
- (2) Except as otherwise provided in this section, to the extent a transfer is avoidable in an action by a creditor under Subsection 25-6-303(1)(a), the following rules apply:
- (a) the creditor may recover judgment for the value of the asset transferred, as adjusted under Subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less; and
 - (b) the judgment may be entered against:
 - (i) the first transferee of the asset or the person for whose benefit the transfer was made; or
 - (ii) an immediate or mediate transferee of the first transferee, other than:
 - (A) a good faith transferee that took for value; or
 - (B) an immediate or mediate good faith transferee of a person described in Subsection (2)(b)(ii)(A); and
 - (c) recovery under Subsection 25-6-303(1)(a) or (2) of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in Subsection (2)(b)(i) or (ii).
- (3) If the judgment under Subsection (2) is based upon the value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer, subject to an adjustment as equities may require.
- (4) Except as otherwise provided in this section, notwithstanding the voidability of a transfer or an obligation under this chapter, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:
- (a) a lien on or a right to retain an interest in the asset transferred;
 - (b) enforcement of an obligation incurred; or
 - (c) a reduction in the amount of the liability on the judgment.
- (5) A transfer is not voidable under Subsection 25-6-202(1)(b) or Section 25-6-203 if the transfer results from:
- (a) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or
 - (b) enforcement of a security interest in compliance with Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.
- (6) Except as otherwise provided in this section, a transfer is not voidable under Subsection 25-6-203(2):
- (a) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent the new value was secured by a valid lien;
 - (b) if made in the ordinary course of business or financial affairs of the debtor and the insider; or
 - (c) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.
- (7) A transfer is not voidable under Section 25-6-202 or Subsection 25-6-203(1) if:
- (a) the transfer was made by the debtor:

- (i) in payment of or in exchange for goods, services, or other consideration obtained by the debtor or a third party from a merchant in the ordinary course of the merchant's business; or
- (ii) in payment of amounts loaned or advanced by a merchant or a credit or financing company to pay for the goods, services, or other consideration obtained by the debtor or a third party from a merchant in the ordinary course of the merchant's business;
- (b) the goods, services, or other consideration obtained from the merchant or the amounts loaned or advanced by the merchant or the credit or financing company in payment of the goods, services, or other consideration obtained from the merchant in the ordinary course of the merchant's business was of a reasonably equivalent value to the transfer, as provided in Subsection (8); and
- (c) the transferee received the transfer in good faith, in the ordinary course of the transferee's business, and without actual knowledge that:
 - (i) the transfer was made by the debtor with actual intent to hinder, delay, or defraud any creditor of the debtor; or
 - (ii) that the debtor was insolvent at the time the transfer was made.
- (8) For purposes of Subsection (7):
 - (a) the term "merchant" means the same as that term is defined in Section 70A-2-104;
 - (b) where the value of the goods, services, or other consideration obtained from the merchant, or where the value of the amounts loaned or advanced by a merchant or a credit or financing company in payment of the goods, services, or other consideration obtained from the merchant, was reasonably equivalent to the value of the transfer, the "reasonably equivalent value" requirement in Subsection (7)(b) will be satisfied regardless of whether the debtor or a third party received the reasonably equivalent value for the transfer; and
 - (c) a transferee's receipt of payment from a debtor is not, and may not be used as, evidence that:
 - (i) the transferee did not act in good faith;
 - (ii) the goods, services, or other consideration were not provided by the merchant in the ordinary course of the merchant's business;
 - (iii) the transferee had actual knowledge that the transfer was made by the debtor with actual intent to hinder, delay, or defraud any creditor of the debtor; or
 - (iv) the debtor was insolvent at the time the transfer was made.
- (9) The following rules determine the burden of proving matters referred to in this section:
 - (a) a party that seeks to invoke Subsection (1), (4), (5), or (6) has the burden of proving the applicability of that subsection;
 - (b) except as otherwise provided in Subsections (9)(c) and (d), the creditor has the burden of proving each applicable element of Subsection (2) or (3);
 - (c) the transferee has the burden of proving the applicability to the transferee of Subsection (2)(b)(ii)(A) or (B); and
 - (d) a party that seeks adjustment under Subsection (3) has the burden of proving the adjustment.
- (10) The standard of proof required to establish matters referred to in this section is a preponderance of the evidence.

Renumbered and Amended by Chapter 204, 2017 General Session

25-6-305 Claim for relief -- Time limits.

A claim for relief regarding a transfer or obligation under this chapter is extinguished unless action is brought:

- (1) under Subsection 25-6-202(1)(a), no later than four years after the transfer was made or the obligation was incurred or, if later, no later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;
- (2) under Subsection 25-6-202(1)(b) or 25-6-203(1), no later than four years after the transfer was made or the obligation was incurred; or
- (3) under Subsection 25-6-203(2), no later than one year after the transfer was made.

Renumbered and Amended by Chapter 204, 2017 General Session

Part 4

Applicability and Construction

25-6-401 Title.

This part is known as "Applicability and Construction."

Enacted by Chapter 204, 2017 General Session

25-6-402 Governing law.

- (1) In this section, the following rules determine the debtor's location:
 - (a) a debtor who is an individual is located at the individual's principal residence;
 - (b) a debtor that is an organization and has only one place of business is located at its place of business; and
 - (c) a debtor that is an organization and has more than one place of business is located at its chief executive office.
- (2) A claim for relief in the nature of a claim for relief under this chapter is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

Enacted by Chapter 204, 2017 General Session

25-6-403 Application to series organization.

- (1) As used in this section:
 - (a) "Protected series" means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics described in Subsection (1)(b).
 - (b) "Series organization" means an organization that, pursuant to the law under which it is organized, has the following characteristics:
 - (i) the organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series;
 - (ii) debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization; and

- (iii) debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.
- (2) A series organization and each protected series of the organization is a separate person for purposes of this chapter, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

Enacted by Chapter 204, 2017 General Session

25-6-404 Legal principles applicable to chapter.

Unless displaced by this chapter, the principles of law and equity, including merchant law and the law relating to principal and agent, equitable subordination, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement this chapter's provisions.

Renumbered and Amended by Chapter 204, 2017 General Session

25-6-405 Construction of chapter.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Renumbered and Amended by Chapter 204, 2017 General Session

25-6-406 Applicability of chapter.

- (1) This chapter applies when any transfer occurs after the effective date of this act.
- (2) The amendments to this chapter that take effect on May 9, 2017:
 - (a) apply to a transfer made or obligation incurred on or after May 9, 2017;
 - (b) do not apply to a transfer made or obligation incurred before May 9, 2017; and
 - (c) do not apply to a right of action that has accrued before May 9, 2017.
- (3) For purposes of Subsection (2), a transfer is made and an obligation is incurred at the time provided in Section 25-6-302.

Renumbered and Amended by Chapter 204, 2017 General Session

25-6-407 Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

Enacted by Chapter 204, 2017 General Session

Part 5
Asset Protection Trust

25-6-501 Title.

This part is known as "Asset Protection Trust."

Enacted by Chapter 204, 2017 General Session

25-6-502 Asset protection trust.

(1) As used in this section:

(a) "Creditor" means:

- (i) a creditor or other claimant of the settlor existing when the trust is created; or
- (ii) a person who subsequently becomes a creditor, including, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured:
 - (A) one holding or seeking to enforce a judgment entered by a court or other body having adjudicative authority; or
 - (B) one with a right to payment.

(b) "Domestic support obligation" means:

- (i) a child support judgment or order;
- (ii) a spousal support judgment or order; or
- (iii) an unsatisfied claim arising from a property division in a divorce proceeding.

(c) "Insolvent" means:

- (i) having generally ceased to pay debts in the ordinary course of business other than as a result of a bona fide dispute;
- (ii) being unable to pay debts as they become due; or
- (iii) being insolvent within the meaning of federal bankruptcy law.

(d)

- (i) "Property" means real property, personal property, and interests in real or personal property.
- (ii) "Personal property" includes intangible and tangible personal property.

(e) "Settlor" means a person who transfers property in trust.

(f) "Transfer" means any form of transfer of property, including gratuitous transfers, whether by deed, conveyance, or assignment.

(g) "Trust" has the same meaning as in Section 75-1-201.

(2) "Paid and delivered" to the settlor, as beneficiary, does not include the settlor's use or occupancy of real property or personal property owned by the trust if the use or occupancy is in accordance with the trustee's discretionary authority under the trust instrument.

(3) If the settlor of an irrevocable trust is also a beneficiary of the trust, and if the requirements of Subsection (5) are satisfied, a creditor of the settlor may not:

- (a) satisfy a claim or liability of the settlor in either law or equity out of the settlor's transfer to the trust or the settlor's beneficial interest in the trust;
- (b) force or require the trustee to make a distribution to the settlor, as beneficiary; or
- (c) require the trustee to pay any distribution directly to the creditor, or otherwise attach the distribution before it has been paid or delivered by the trustee to the settlor, as beneficiary.

(4) Notwithstanding Subsection (3), nothing in this section:

- (a) prohibits a creditor from satisfying a claim or liability from the distribution once it has been paid or delivered by the trustee to the settlor, as beneficiary; or
- (b) nullifies or impairs a security interest that was granted by a settlor or a trustee with respect to property that is transferred to the trust.

(5) In order for Subsection (3) to apply, the conditions in this Subsection (5) shall be satisfied.

Where this Subsection (5) requires that a provision be included in the trust instrument, no

particular language need be used in the trust instrument if the meaning of the trust provision otherwise complies with this Subsection (5).

- (a) An agreement or understanding, express or implied, between the settlor and the trustee that attempts to grant or permit the retention by the settlor of greater rights or authority than is stated in the trust instrument is void.
- (b) The trust instrument shall provide that the trust is governed by Utah law and is established pursuant to this section.
- (c) The trust instrument shall require that at all times at least one trustee shall be a Utah resident or Utah trust company, as the term "trust company" is defined in Section 7-5-1.
- (d) The trust instrument shall provide that neither the interest of the settlor, as beneficiary, nor the income or principal of the trust may be voluntarily or involuntarily transferred by the settlor, as beneficiary. The provision shall be considered to be a restriction on the transfer of the settlor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of 11 U.S.C. Sec. 541(c)(2).
- (e) The settlor may not have the ability under the trust instrument, without the consent of a person who has a substantial beneficial interest in the trust, which interest would be adversely affected by the exercise of the power held by the settlor:
 - (i) to revoke, amend, or terminate all or any part of the trust; or
 - (ii) to withdraw any property from the trust, except that the settlor, without the approval or consent of any person, may be given the power, under the trust agreement, to substitute assets of substantially equivalent value.
- (f) The trust instrument may not provide for any mandatory distributions of either income or principal to the settlor, as beneficiary, except as provided in Subsection (7)(g).
- (g)
 - (i) The trust instrument shall require that, at least 30 days before paying and delivering any distribution to the settlor, as beneficiary, the trustee notify in writing every person who has a domestic support obligation against the settlor.
 - (ii) The trust instrument shall require that the notice state the date the distribution will be paid and delivered and the amount of the distribution.
- (h) At the time that the settlor transfers any assets to the trust, the settlor may not be in default of making a payment due under a domestic support obligation.
- (i) A transfer of assets to the trust may not render the settlor insolvent.
- (j) At the time the settlor transfers any assets to the trust, the settlor may not intend to hinder, delay, or defraud a known creditor by transferring the assets to the trust. A settlor's expressed intention to protect trust assets from the settlor's potential future creditors is not evidence of an intent to hinder, delay, or defraud a known creditor.
- (k) Assets transferred to the trust may not be derived from unlawful activities.
- (l) With respect to each transfer of assets to the trust, the settlor shall sign a sworn affidavit stating that at the time of the transfer of the assets to the trust:
 - (i) the settlor has full right, title, and authority to transfer the assets to the trust;
 - (ii) the transfer of the assets to the trust will not render the settlor insolvent;
 - (iii) the settlor does not intend to hinder, delay, or defraud a known creditor by transferring the assets to the trust;
 - (iv) there is no pending or threatened court action against the settlor, except for a court action identified by the settlor on an attachment to the affidavit;
 - (v) the settlor is not involved in an administrative proceeding that is reasonably expected to have a material adverse effect on the financial condition of the settlor, except an administrative proceeding identified on an attachment to the affidavit;

- (vi) at the time of the transfer of the assets to the trust, the settlor is not in default of a domestic support obligation;
 - (vii) the settlor does not contemplate filing for relief under the provisions of United States Code, Title 11, Bankruptcy; and
 - (viii) the assets being transferred to the trust were not derived from unlawful activities.
- (6) Failure to satisfy the requirements of Subsection (5) shall result in the consequences described in this Subsection (6).
- (a) If any requirement of Subsections (5)(b) through (g) is not satisfied, none of the property held in the trust will at any time have the benefit of the protections described in Subsection (3).
 - (b) If the trustee does not send the notice required under Subsection (5)(g), the court may authorize any person with a domestic support obligation against the settlor to whom notice was not sent to attach the distribution or future distributions, but the person may not:
 - (i) satisfy a claim or liability in either law or equity out of the settlor's transfer to the trust or the settlor's beneficial interest in the trust; or
 - (ii) force or require the trustee to make a distribution to the settlor, as beneficiary.
 - (c) If any requirement described in Subsections (5)(i) through (l) is not satisfied, the property transferred to the trust that does not satisfy the requirement may not have the benefit of the protections described in Subsection (3).
 - (d) If the requirement described in Subsection (5)(h) is not satisfied, the property transferred to the trust that does not satisfy the requirement does not have the benefit of the protections described in Subsection (3) with respect to any person with a domestic support obligation.
 - (e) A creditor of the settlor has the burden of proving that the requirement in Subsection (5)(i) or (j) is not satisfied by clear and convincing evidence.
- (7) The provisions of Subsection (3) may apply to a trust even if:
- (a) the settlor serves as a cotrustee or as an advisor to the trustee, except that the settlor may not determine whether a discretionary distribution will be made;
 - (b) the settlor participates in a determination regarding whether a discretionary distribution is made to the settlor by:
 - (i) requesting a distribution from the trust;
 - (ii) consulting with the trustees regarding whether a discretionary distribution will be made;
 - (iii) exercising a right to consent to or veto the distribution under a power described in Subsection (7)(e);
 - (iv) signing documentation in the settlor's capacity as a cotrustee that implements a distribution when the other trustees use discretionary power to independently authorize a distribution; or
 - (v) participating in an action authorizing a distribution if the other trustees can authorize the distribution without the settlor's participation.
 - (c) the settlor has the authority under the terms of the trust instrument to appoint a nonsubordinate advisor or a trust protector who can remove and appoint trustees and who can direct, consent to, or disapprove distributions;
 - (d) the settlor has the power under the terms of the trust instrument to serve as an investment director or to appoint an investment director under Section 75-7-906;
 - (e) the trust instrument gives the settlor the power to consent to or veto a distribution from the trust;
 - (f) the trust instrument gives the settlor an inter vivos or a testamentary nongeneral power of appointment or similar power;
 - (g) the trust instrument gives the settlor the right to receive the following types of distributions:
 - (i) income, principal, or both in the discretion of a person, including a trustee, other than the settlor;

- (ii) principal, subject to an ascertainable standard set forth in the trust;
- (iii) income or principal from a charitable remainder annuity trust or charitable remainder unitrust, as defined in 26 U.S.C. Sec. 664;
- (iv) a percentage of the value of the trust each year as determined under the trust instrument, but not exceeding the amount that may be defined as income under 26 U.S.C. Sec. 643(b);
- (v) the transferor's potential or actual use of real property held under a qualified personal residence trust, or potential or actual possession of a qualified annuity interest, within the meaning of 26 U.S.C. Sec. 2702 and the accompanying regulations;
- (vi) income or principal from a grantor retained annuity trust or grantor retained unitrust that is allowed under 26 U.S.C. Sec. 2702; and
- (vii) income from a trust intended to qualify for the federal estate tax or gift tax marital deduction under 26 U.S.C. Sec. 2056(b)(7) or 2523(f);
- (h) the trust instrument authorizes the settlor to use real or personal property owned by the trust; or
- (i) with respect to the property held in the trust, the settlor may:
 - (i) give a personal guarantee on a debt or obligation secured by the property;
 - (ii) make payments, directly or indirectly, on a debt or obligation secured by the property;
 - (iii) pay property taxes, casualty and liability insurance premiums, homeowner association dues, maintenance expenses, or other similar expenses on the property; or
 - (iv) pay income tax on income attributable to the portion of property held in the trust, of which the settlor is considered to be the owner under 26 U.S.C. Secs. 671 through 678, which payments will not be considered additional transfers to the trust for purposes of this section.
- (8) If a trust instrument contains the provisions described in Subsections (5)(b) through (g), the transfer restrictions prevent a creditor or other person from asserting any cause of action or claim for relief against a trustee of the trust or against others involved in the counseling, drafting, preparation, execution, or funding of the trust for conspiracy to commit fraudulent conveyance or another voidable transfer, aiding and abetting a fraudulent conveyance or another voidable transfer, participation in the trust transaction, or similar cause of action or claim for relief. For purposes of this subsection, counseling, drafting, preparation, execution, or funding of the trust includes the preparation and funding of a limited partnership, a limited liability company, or other entity if interests in the entity are subsequently transferred to the trust. The creditor and other person prevented from asserting a cause of action or claim for relief may assert a cause of action against, and are limited to recourse against, only:
 - (a) the trust and the trust assets; and
 - (b) the settlor, to the extent otherwise allowed in this section.
- (9)
 - (a) A cause of action or claim for relief under Subsection (5)(i) or (j) is a cause of action or claim for relief under Section 25-6-202 or 25-6-203.
 - (b) Except as provided in Subsection (9)(a), a cause of action or claim for relief under this section is not a cause of action or claim for relief under Sections 25-6-101 through 25-6-407.
 - (c) Notwithstanding Section 25-6-305, a cause of action or claim for relief regarding a fraudulent conveyance or other voidable transfer of a settlor's assets under this section is extinguished unless the action is brought by a creditor of the settlor who was a creditor of the settlor before the assets in question were transferred to the trust and the action is brought within the earlier of:
 - (i) the later of two years after the transfer is made, or one year after the transfer is or reasonably could have been discovered by the creditor if the creditor:

- (A) can demonstrate, by clear and convincing evidence, that the creditor asserted a specific claim against the settlor before the transfer; or
 - (B) files another action, other than an action alleging a fraudulent conveyance or other voidable transfer against the settlor that asserts a claim based on an act or omission of the settlor that occurred before the transfer, and the action described in Subsection (9)(c) is filed within two years after the transfer; or
- (ii)
- (A) with respect to a creditor known to the settlor, 120 days after the date on which notice of the transfer is mailed to the creditor, which notice shall state the name and address of the settlor or the settlor's representative, the name and address of the trustee or the trustee's representative, and also describe the assets that were transferred, but does not need to state the value of those assets if the assets are other than cash, and which shall inform the creditor that the creditor is required to bring the creditor's cause of action or claim for relief against the settlor and the trustee within 120 days from the mailing of the notice or be forever barred; or
 - (B) with respect to a creditor not known to the settlor, 120 days after the date on which notice of the transfer is first published in a newspaper of general circulation in the county in which the settlor then resides, or is published on a public legal notice website as defined in Section 45-1-101, which notice shall state the name of the settlor or the settlor's representative, the address of the settlor or the settlor's representative, the name of the trustee or the trustee's representative, the address of the trustee or the trustee's representative, and also describe the assets that were transferred, but does not need to state the value of those assets.
- (10)
- (a) The notice required in Subsection (9)(c)(ii)(B) shall be published in accordance with the provisions of Section 45-1-101 for three consecutive weeks and inform creditors that they are required to bring a cause of action or claim for relief within 120 days from the first publication of the notice or be forever barred.
 - (b) Failure to give the notice required in Subsection (9)(c)(ii) to a creditor does not prevent the shortening of the limitations period under Subsection (9)(c)(ii) with respect to another creditor who properly received notice by mail or publication.
- (11)
- (a) A trust is subject to this section if it is governed by Utah law, as provided in Section 75-7-107, and if it otherwise meets the requirements of this section.
 - (b) A court of this state has exclusive jurisdiction over an action or claim for relief that is based on a transfer of property to a trust that is the subject of this section.
- (12)
- (a) With respect to a trust that is subject to this section, a claim brought by a creditor of a beneficiary who is not the settlor is subject to Section 75-7-501 et. seq.
 - (b) With respect to an irrevocable trust that is not subject to this section, a claim brought by a creditor of a beneficiary who is the settlor is subject to the provisions of Subsection 75-7-505(2).
- (13) If a provision in this section conflicts with a provision in Sections 25-6-101 through 25-6-407, the provision of this section shall supersede the conflicting provision in Sections 25-6-101 through 25-6-407.
- (14) Nothing in this section alters rights vested or created under this section before May 14, 2019.

Amended by Chapter 95, 2019 General Session

